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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

LANDON HARPER, individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act,

Plaintiffs,

v.

XCLUSIVE WIRELESS RESOURCES, LLC, a
California limited liability company; and DOES
1 through 100, inclusive,

Defendants.

Case No. STK-CV-UOC-2024-1658

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Judge: Hon. John Soldati
Dept.: 10D

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SECONDARY SOURCES

29	Conte & Newberg, <i>Newberg on Class Actions</i> , § 1 1:38, §§ 11.26, 11.51 (4th ed. 2002)	
30		10
31	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
32	53 UCLA L. Rev. 1303 (2006)	
33		21
34	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
35		20

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I. INTRODUCTION

Plaintiff LANDON HARPER (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement and Release Agreement (“Settlement”)¹, which if approved, would provide valuable monetary relief for approximately 256 Class Members. The basic terms of the Settlement provide for the following:

1. The “**Class Member(s)**” and “**Class Period**” shall mean all current and former hourly-paid or non-exempt employees of Xclusive Wireless Resources, LLC (“Defendant”) in California employed during the period from February 13, 2020, through September 28, 2024 (“Class Period”). Joint Stipulation of Class Action and PAGA Settlement and Release Agreement (“Settlement”) at § 9(e), 9(g); MOU at ¶¶ 3,4.

2. The “**PAGA Members**” and “**PAGA Period**” shall mean all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period of December 7, 2022, through September 28, 2024. Settlement at §§ 9(z), 9(bb); MOU at ¶¶ 5,6.

3. The “**Total Settlement Amount**” is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Settlement at § 9(nn); MOU at ¶ 8. The Total Settlement Amount is non-reversionary and includes the following:

a. A “**Enhancement Payment**” in the amount of \$10,000 to Plaintiff for his services on behalf of the Class Members. Settlement at §14; MOU at ¶ 12;

b. A payment of “**Attorneys’ Fees and Costs**” in the amount not to exceed 35% of the Total Settlement Amount for attorney’s fees, currently estimated to be \$262,500.00 *and* a reimbursement of actual costs and expenses associated with Class Counsel’s litigation and settlement of the action, not to exceed \$35,000.00, to be paid to Class Counsel. Settlement at § 13; MOU at ¶¶ 13;

c. A “**PAGA Penalty Amount**” of \$65,000.00 shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act

¹ The basic terms of the Settlement are outlined in the fully executed Memorandum of Understanding (“MOU”), attached as Exhibit 2 to the Declaration of Shani O. Zakay, Esq. (“SOZ Dec.”) at ¶ 5. All citations to the MOU incorporate by this reference a citation to the SOZ Dec., ¶ 5. Additional proposed terms of the Settlement are outlined in a partially executed long-form settlement agreement (“Settlement”), attached as Exhibit 1 to the SOZ Dec. All citations to the Settlement incorporate by this reference a citation to the SOZ Dec. As detailed herein, the long-form agreement has not yet been executed by Defendant, though Defendant has not raised any issues with any specific provisions in the Settlement Agreement.

of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Amount to the Labor and Workforce Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Amount to the PAGA Members. Settlement at § 16; MOU at ¶ 10; and

d. **“Settlement Administration Costs”** not to exceed \$7,000.00 payable to the Settlement Administrator, Apex Class Action LLC. Settlement at §§ 9(kk), 9(ll), 15; MOU at ¶ 20.

4. The **“Net Settlement Amount”** of approximately \$370,500.00 (Total Settlement Amount less the Court approved Enhancement Payment, Settlement Administration Costs, PAGA Amount, and Attorneys’ Fees and Costs) which will be allocated to all Settlement Class on a pro-rata basis according to the number of Workweeks each Class Member worked during the Class Period. The Net Settlement Amount will be paid to all Settlement Class who do not opt out of the Settlement Class resulting in an average Individual Settlement Payment of approximately **\$1,447.27**, based on the demographics provided by Defendant’s counsel and as listed in the partially-executed Settlement. Settlement at § 9(v), 17; MOU at ¶ 21.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. Both the Settlement and the MOU upon which the Settlement is based were negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. Declaration of Lawyers for Justice, PC (“LFJ Dec.”) Dec., ¶¶ 8-25.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. LFJ Dec., ¶¶ 26-34.

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II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides telecommunications and wireless infrastructure solutions to businesses. This action asserts claims on behalf of all current and former hourly-paid or non-exempt employees of Defendant employed in California employed during the Class Period. At all times during his employment, Plaintiff was classified by Defendant as a non-exempt employee, paid on an hourly basis, and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures. LFJ Dec., ¶ 8; Declaration of Landon Harper at ¶¶ 4-5.

On December 7, 2023, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue civil penalties under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA") for alleged violations of the California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001 and 16-2001 ("PAGA Notice"). LFJ Dec., ¶ 10.

On February 13, 2024, Plaintiff filed a class action complaint in the San Joaquin County Superior Court ("Class Action"). The Class Action alleged ten causes of action against Defendant for: (1) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 and 1198; (2) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (3) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code § 226.7; (4) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (5) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202; (6) Failure to Timely Pay Wages During Employment in Violation of California Labor Code § 204; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226(a); (8) Failure to Keep Requisite Payroll Records in Violation of California Labor Code § 1174(d); (9) Failure to Reimburse Employees for Required Expenses in

violation of California Labor Code 2800 and 2802; and (10) Unfair Competition in Violation of California Business and Professions Code §§ 17200. LFJ Dec., ¶ 12.

On February 13, 2024, Plaintiff filed a representative action complaint in the San Joaquin County Superior Court (“PAGA Action”). The PAGA Action alleges a single cause of action against Defendant for Violations of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004). LFJ Dec., ¶ 11.

On March 22, 2024, the Class Action and the PAGA Action were consolidated into the PAGA Action. Lawyers for Justice, PC joined forces with and associated in the attorneys at JCL Law Firm, APC and Zakay Law Group, APLC to represent Plaintiff (collectively, the firms are referred to as “Class Counsel”) and the Class Members. LFJ Dec., ¶ 13.

Generally, Plaintiff claims that Defendant failed to pay employees for all time worked, including overtime, failed to provide them with proper meal and rest breaks, failed to reimburse for required business expenses, and failed to issue accurate itemized wage statements. Defendant denies liability for each of Plaintiff’s claims. Declaration of Shani O. Zakay, Esq. (“SOZ Dec.”), ¶ 10.

The Parties agreed to attend private mediation with Mediator Daniel J. Turner, Esq. on July 22, 2024. To facilitate settlement negotiations, Defendant agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sampling of the Class Members’ time and payroll data, and pertinent written wage and hour policies. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. LFJ Dec., ¶ 22.

The Parties engaged in arms-length settlement negotiations with Mediator Turner’s assistance. The mediation did not end with a settlement. Through continued negotiations and with the assistance of Mediator Turner, the Parties each accepted a mediator’s proposal, which was subsequently memorialized in the form of a Memorandum of Understanding, a fully executed version of which is attached to the SOZ Dec. as Exhibit 2. On May 15, 2025, Plaintiff provided Defendant an initial draft of a long-form Settlement Agreement. LFJ Dec., ¶ 24.

From June 25, 2025, to October 13, 2025, the Parties negotiated the terms of the long-form settlement agreement. On October 14, 2025, Defendant’s counsel *confirmed* that the long-form

1 settlement agreement was agreeable to be circulated for each party's respective signatures, a true and
2 correct copy of the referenced email correspondence is attached as Exhibit 5 to the SOZ Declaration.
3 On October 22, 2025, Plaintiff sent Defendant the partially-executed settlement agreement, signed on
4 behalf of Plaintiff and Plaintiff's counsel, a partially executed copy of which is attached as Exhibit 1 to
5 the SOZ Declaration. SOZ Dec., ¶ 11.

6 On October 28, 2025, Defendant's counsel informed Plaintiff, via email correspondence, that
7 "The final SAR has been forwarded to the Defendant; however, Ms. Hatfield [Defendant's counsel]
8 will be withdrawing as counsel", accompanied with Defendant's Substitution of Attorney. The
9 Substitution of Attorney improperly named Defendant, itself as an entity, as Defendant's new legal
10 representative. Accordingly, on November 19, 2025, Plaintiff filed an objection to Defendant's
11 substitution of Attorney. SOZ Dec., ¶ 12.

12 On February 23, 2026, the Court noticed an Order to Show Cause Re: Defendant's Finding New
13 Counsel and Order to Show Cause Re: Defendant Honoring Settlement. The Order to Show Cause was
14 heard on March 25, 2026. As Defendant did not appear, Plaintiff requested a thirty (30) day continuance
15 and informed the Court of Plaintiff's intention to file a Motion to Enforce the Memorandum of
16 Understanding, pursuant to California Code of Civil Procedure ("CCP") Section 664.6, absent an
17 appearance from Defendant at the continued date. The Court continued the Order to Show Cause to
18 April 21, 2026. On April 21, 2026, Defendant once again did not appear. Plaintiff is now left with no
19 choice but to file this motion to enforce the fully executed Memorandum of Understanding, pursuant
20 to CCP 664.6, and approve the class and PAGA settlement in an effort to avoid severe prejudice to the
21 Plaintiff and the other Class Members by Defendant attempting to evade a settlement it voluntarily
22 agreed to. SOZ Dec., ¶ 13.

23 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

24 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
25 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
26 part of the interview process, the Plaintiff produced documents related to his employment, including,
27 among other things, copies of his wage statements. At the conclusion of the interviews, Class Counsel
28 determined that each Plaintiff's complaints justified further inquiry. LFJ Dec., ¶ 15.

1 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
2 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
3 documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to
4 the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class
5 Member time and payroll records, and copies of applicable policies, and agreements containing, *inter*
6 *alia*, compensation, timekeeping and meal and rest period policies. LFJ Dec., ¶ 18.

7 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
8 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
9 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
10 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
11 differently, BCG is uniquely qualified to analyze Defendant's time and payroll data. LFJ Dec., ¶ 20.

12 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
13 Plaintiff's suitability as a putative class representative through interviews, background investigations,
14 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
15 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
16 of employer; (4) analyzing the Class's time and payroll records; (5) analyzing Defendant's labor
17 policies and practices; (6) researching settlements in similar cases as well as outstanding issues which
18 could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability
19 for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This
20 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
21 as well as the impediments to recovery, such as to make an independent assessment of the
22 reasonableness of the terms to which the Parties have agreed. LFJ Dec., ¶ 21.

23 **C. The Parties Settled Post Mediation**

24 On July 22, 2024, the Parties conducted a full day of mediation with Mediator Daniel J. Turner,
25 Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Turner helped
26 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
27 sides. The Parties made substantial progress with Mediator Turner's assistance. Namely, the Parties
28 exchanged information regarding their respective claims and defenses, including their respective

1 evaluation of the damages. Ultimately, a mediator's proposal was accepted by the Parties and
2 subsequently memorialized in the form of a Memorandum of Understanding. The complete and final
3 terms of the Parties' settlement were set forth in the Settlement. Class Counsel submits that the
4 Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. LFJ Dec., ¶¶
5 22-24.

6 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

7 1. The Composition of the Class

8 The proposed Class consists of all current and former hourly-paid or non-exempt employees of
9 Defendant in California employed during the period beginning February 13, 2020, through September
10 28, 2024. MOU at ¶¶ 3,4.

11 2. The Settlement Consideration

12 The Parties agreed to settle the underlying class claims in exchange for the Total Settlement
13 Amount of \$750,000.00. Settlement at 9(nn); MOU at ¶ 8. The Total Settlement Amount includes: (1)
14 Individual Settlement Payments to the Settlement Class; (2) a Enhancement payment of \$10,000.00 to
15 Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA Penalty Amount in the amount
16 of \$65,000.00; (4) Settlement Administration Costs estimated at \$7,000.00; (5) Attorneys' Fees and
17 Costs in the amount of \$297,500.00, comprised of attorneys' fees equal to 35% of the Total Settlement
18 Amount estimated to be \$262,500.00 and an estimated \$35,000.00 for actually incurred litigation
19 expenses. See generally Settlement at § 9(b); MOU at ¶ 13.

20 Subject to the Court approving the Enhancement payment, Attorneys' Fees and Costs, PAGA
21 Penalty Amount, and the Settlement Administration Costs, the Net Settlement Amount will be
22 distributed to each participating member of the Settlement Class. Settlement at § 9(v); MOU at ¶ 9.
23 There is no reversion to Defendant and Defendant must separately pay for its share of the employer
24 payroll taxes. Settlement at § 9(nn); MOU at ¶ 8.

25 3. Formula for Calculating Individual Settlement Payments

26 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
27 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
28 worked for Defendants in California during the Class Period. Using the Class Data, the Settlement

1 Administrator shall add up the total number of Workweeks for all Class Members. The respective
2 Workweeks for each Class Member will be divided by the total Workweeks for all Class Members,
3 resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then
4 be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
5 Settlement Payment. Settlement at § 17; MOU at ¶ 21.

6 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
7 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class
8 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class
9 Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their
10 respective Payment Ratios. Settlement at § 24.

11 Given that there are approximately 256 Settlement Class Members, the average gross recovery
12 is approximately \$1,447.27 (Net Settlement Amount divided by Settlement Class Members).
13 Settlement at § 9(v), 17; MOU at ¶ 21. This average net recovery exceeds many wage and hour class
14 action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT*
15 *Hotels, LLC*, et al., San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of
16 \$283.35); *Almanza v. The Express Group Inc.*, San Bernardino Superior Court Case No.
17 CIVDS1722542 (average net recovery \$174.68); *Macaspac v. San Antonio Regional Hospital*, San
18 Bernardino Superior Court Case No. CIVDS1512625 (average net recovery \$715.97) and *Crawford et*
19 *al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net
20 recovery \$333.98).

21 4. Release by Participating Settlement Class Members

22 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
23 release the Released Parties from all claims under state, federal, and/or local law, arising out of the
24 claims expressly pleaded in the Action and all other claims, such as those under the California Labor
25 Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based
26 on the facts pleaded in the Action or are reasonably related to the facts asserted therein, including, but
27 not limited to, all claims for: (1) failure to pay overtime wages and/or pay overtime wages at the correct
28 rate under Labor Code Sec. 510, 1198; (2) failure to provide meal periods and/or pay meal period

1 premiums under Labor Code Sec. 226.7, 512; (3) failure to provide rest periods and/or pay rest period
2 premiums under Labor Code Sec. 226.7; (4) failure to pay minimum wages and/or pay minimum wage
3 at the correct rate under Labor Code Sec. 1194, et seq., 1197 and 1197.1; (5) failure to timely pay wages
4 upon termination under Labor Code Sec. 201, 202, 203; (6) failure to timely pay wages during
5 employment under Labor Code Sec. 204, 210; (7) failure to provide accurate, itemized wage statements
6 (based on both direct and derivative theories of liability) under Labor Code Sec. 226; (8) failure to
7 maintain requisite employment and/or payroll records under Labor Code Sec. 1174(d); (9) failure to
8 reimburse business expenses under Labor Code Sec. 2800, 2802; (10) violation of California's unfair
9 competition law under Business and Professions Code Sec. 17200, et seq., arising from violations of
10 the Labor Code released herein, and any and all related claims and penalties that arose during the Class
11 Release Period, except for PAGA penalties, which are separately released herein. Settlement at §§ 9(ff),
12 9(hh); MOU at ¶ 17.

13 5. PAGA Release by the PAGA Members

14 Generally, upon the Funding Date, and in exchange for the consideration set forth in the
15 Settlement, Plaintiff, and the LWDA will release the Released Parties from all claims for civil penalties
16 under the Private Attorneys General Act, California Labor Code section 2698, et seq. that were alleged
17 in the PAGA Notice and Operative Complaint in the Actions or that reasonably could have been alleged
18 based on the factual allegations in the PAGA Notice and Operative Complaint in the Actions, arising
19 during the PAGA Period, against any of the Released Parties, for violations of the California Labor
20 Code, including inter alia 201,202,203,204, 210, 218.5, 226(a), 226.7, 510, 512(a), 551, 552, 558,
21 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including inter alia, Wage
22 Orders 4-2001, and 16- 2001 for failure to pay all and overtime wages due; failure to provide compliant
23 meal periods and associated premiums; failure to provide compliant rest periods and associated
24 premiums; failure to pay all minimum wages due; failure to pay all wages timely during employment,
25 failure to pay all wages timely at the time of separation; failure to provide complete, accurate, or
26 properly formatted wage statements; failure to maintain requisite payroll records; and failure to
27 reimburse business expenses. Settlement at §§ 9(gg), 9(hh); MOU at ¶ 17.

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III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

The proposed Settlement, including a Total Settlement Amount of \$750,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

4 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by
5 Experienced Counsel.

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation with Mediator Daniel J. Turner, Esq, an experienced
12 mediator of wage and hour class and PAGA actions. Mediator Turner managed the Parties’ expectations
13 and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*
14 *Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
15 (mediator’s participation weighs considerably against any inference of a collusive settlement);
16 *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-
17 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
18 undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-
19 collusive. The matter resolved only after Mediator Turner heard arguments, reviewed evidence, and
20 evaluated the Parties’ respective claims and defenses. The Settlement is the final product of these
21 mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
22 compromise of the claims at issue. LFJ Dec., ¶ 26.

23 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
24 Settlement’s Reasonableness.

25 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
26 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
27 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
28 Although no two cases are identical, this research provided Class Counsel with a marker to inform

1 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
2 Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in
3 settlement discussions that culminated in the proposed settlement now before the Court. LFJ Dec., ¶
4 27.

5 Class Counsel only agreed to settle the action following thorough investigation and evaluation
6 of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for
7 similar settlements, and considering the risk of significant delay, uncertainty associated with litigation,
8 and the various defenses asserted by Defendant, Class Counsel firmly believes this Settlement to be in
9 the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and
10 adequate, the Court should preliminarily approve the Settlement. LFJ Dec., ¶ 28.

11 3. The Settlement Falls Within the Recognized Range of Reasonableness.

12 The Total Settlement Amount of \$750,000.00 is within the range of reasonable settlement for
13 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
14 "consider enough information about the nature and magnitude of the claims being settled, as well as
15 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
16 which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
17 In making this determination, the court is "not to try the case" but rather "satisfy itself that the class
18 action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis,
19 courts do "not require any such explicit statement of value; [they] require[] a record which allows an
20 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."
21 " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
22 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
23 recovery plaintiffs might have received if they had succeeded at trial. Indeed, "[t]he determination
24 whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a
25 particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In*
26 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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28 ///

1 **a. The Total Settlement Amount Meets the Recognized Range of**
2 **Reasonableness.**

3 The Total Settlement Amount of \$750,000.00 is well within the range of reasonableness
4 considering the nature and magnitude of the claims being settled and the various potential impediments
5 to recovery. To determine whether a settlement is fair and reasonable, the court should “consider
6 enough information about the nature and magnitude of the claims being settled, as well as the
7 impediments to recovery, to make an independent assessment of the reasonableness of the terms to
8 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
9 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
10 action settlement is within the ‘ballpark of reasonableness.’” (*Id.*) For this analysis, courts do “not
11 require any such explicit statement of value; [they] require[] a record which allows an understanding
12 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v.*
13 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The
14 reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery
15 plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a
16 settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized
17 sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael*
18 *Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

19 Class Counsel retained BCG to develop economic damage models measuring Defendant’s
20 potential liability exposure with respect to the Class and PAGA claims. The damage models were
21 informed by Class Counsel’s investigation, including the analysis of the time and payroll data
22 Defendant produced. LFJ Dec., ¶ 29. Class Counsel projected Defendant’s liability exposure for *class*

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 *claims* (excluding PAGA penalties) to be between \$1,339,468.53 and \$3,006,628.70. Thus, the Total
2 Settlement Amount of \$750,000.00 represents between 55.99% – 24.94% of Defendant’s *class-wide*
3 liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes
4 Defendant’s estimated exposure.

5 (1) Estimated Damages for Meal Period Violations

6 Plaintiff alleged that Defendant failed to provide compliant meal and rest periods. Plaintiff
7 alleges that Defendant failed to provide compliant meal periods and failed to provide meal period
8 premiums. Plaintiff argues that, during many shifts, Plaintiff and other Class Members did not have an
9 opportunity to take an off-duty meal break. Moreover, Plaintiff’s analysis of Defendant’s time and
10 payroll records demonstrated that over 56.4% of eligible shifts reflected at least one type of recorded
11 meal period violation. Additionally, over 89% of Defendant’s time and corresponding wage records are
12 exactly 30 or 60 minutes in length, revealing an underlying pattern of synthetic time records.

13 Defendant maintains that lawful policies were in place and that Class Members were provided
14 the opportunity to take compliant meal breaks. Defendant also argues that alleged violations for missed
15 meal breaks occurring in shifts of less than 6 hours had been validly waived pursuant to a meal period
16 waiver. Finally, Defendant maintains that establishing liability would require individualized inquiries
17 not suitable for class wide adjudication.

18 Plaintiff estimates Defendant’s exposure for meal period violations to be approximately between
19 \$304,384.08 and \$507,306.80.

20 (2) Estimated Exposure for Rest Period Violations

21 Plaintiff also alleges that Defendant failed to provide compliant rest periods. Specifically,
22 Plaintiff alleges that because of rigorous work schedules and Defendant’s understaffing, Plaintiff and
23 Class Members were rarely able to take timely and duty-free rest periods.

24 Again, Defendant denies liability and asserts that it maintained legally compliant rest period
25 policies and practices throughout the Class Period, and that employees were provided an opportunity to
26 take legally compliant rest breaks. Plaintiff recognizes the evidentiary burdens in establishing this claim.
27 Establishing Plaintiff’s rest period claim would rely, almost entirely, on Class Member testimony,
28 making it a riskier claim at class certification and liability stages. Certification likely would have

1 required depositions of Class Members who provided declarations, and Defendant surely would have
2 obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
3 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
4 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an
5 illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”);
6 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8
7 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform
8 practices.”).

9 As a result, Plaintiff discounted this claim by 40% and estimates that Defendant’s exposure on
10 this claim ranges between \$304,384.08 and \$507,306.80.

11 (3) Estimated Exposure for Unpaid Wages, Including Overtime Wages

12 Plaintiff alleges that Defendant failed to pay Plaintiff and the Class Members for all time worked.
13 Specifically, Plaintiff alleges that he and other Class Members regularly performed work off-the-clock
14 as a result of Defendant’s timekeeping system and workplace policies. According to Plaintiff, employees
15 were required to perform job duties prior to clocking in for their scheduled shifts, such as preparing
16 supplies and tools used in the performance of work duties. Plaintiff also alleges that employees were
17 regularly required to complete assigned job duties after clocking out. Despite class members performing
18 off-the-clock work, Defendant implemented a policy and practice which only permitted Plaintiff and
19 Class Members to record their *scheduled* hours worked. As a result, Plaintiff alleges Defendant failed
20 to pay Class Members proper overtime compensation.

21 Defendant denies liability and asserts that its timekeeping policies were compliant with California
22 law. Defendant states that it required Plaintiff and the Class Members to accurately record all time
23 worked. Moreover, Defendant argues that Plaintiff’s claim for pre- and post-shift work was
24 predominated by individual inquiries, thus making the claim suitable for class treatment. Plaintiff
25 estimates that Defendant’s exposure for this claim is between approximately \$266,336.07 and
26 \$380,480.10.

27 (4) Defendant’s Liability for Unreimbursed Business Expenses

28 Plaintiff alleges that Defendant required employees to use their personal cell phones and

1 personal vehicles in order to perform work-related tasks. Additionally, Plaintiff claims that Defendant
2 failed to reimburse employees for equipment such as steel toe boots, personal protective equipment,
3 and hard hats. Defendant did not reimburse employees for this expense. Plaintiff estimated Defendant's
4 exposure for this claim to be between \$23,040.00 and \$46,080.00.

5 (5) Estimated Exposure for Regular Rate Violations

6 Plaintiff alleges that Defendant failed to include certain non-discretionary forms of pay,
7 including bonuses, incentives, and commissions when calculating the regular rate of pay when paying
8 overtime wages, and redeemed sick pay. The regular rate of pay, which can change from pay period to
9 pay period, includes adjustments to the straight time rate, reflecting, among other things, non-
10 discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly
11 compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4
12 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of
13 his or her regular rate of pay[.]" *Id.* at 553. Further, California Labor Code section 246(1)(1) expressly
14 mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the
15 workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding
16 the use of the sick leave.

17 Conversely, Defendant denied liability and asserted it paid the correct rate of pay for purposes
18 of overtime wages and sick pay. Defendant also argued that these bonuses were discretionary and did
19 not need to be included in the regular rate calculation for payment of overtime wages and sick pay.
20 Plaintiff applied a 50% discount to this claim and estimated Defendant's exposure for this claim to
21 range between \$1,805.50 and \$3,611.00.

22 (6) Estimated Exposure for Wage Statement Violations

23 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
24 statements. Specifically, Plaintiff alleges that Defendant issued wage statements that failed to list the
25 correct overtime rates, failed to list the correct rate of pay for meal premiums, and failed to list all
26 applicable hourly rates in effect each pay period. (See *Naranjo v. Spectrum Security Services* (2022)
27 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage
28 statement penalties). Defendant argued that even if it failed to furnish accurate wage statements,

1 Plaintiff could not establish the injury requirement on a class-wide basis.

2 Plaintiff estimated that Defendant's exposure on this claim ranged between \$178,010.00 and
3 \$254,300.00.

4 (7) Estimated Exposure for Waiting Time Penalties

5 Plaintiff alleged that the Defendant's labor code violations triggered waiting time penalties under
6 Labor Code Section 203. Class Counsel considered the arguable presence of various penalties and
7 weighed the potential recoveries against probable defenses. Specifically, Defendant argued that
8 Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code
9 section 203. Notwithstanding the uncertain nature of this claim, Plaintiff estimated Defendant's
10 exposure for these penalties to be between \$261,508.80 and \$1,307,544.00.

11 (8) Defendant's PAGA Exposure

12 Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising
13 from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendant's PAGA
14 exposure at approximately \$1,881,800.00.

15 Here, the Parties negotiated a good faith PAGA Penalty Amount in the amount of \$65,000.00
16 which is 8.7% of the Total Settlement Amount. This amount falls well within the range of approved
17 PAGA penalties. Seventy-Five percent (75%) of the PAGA Penalty Amount (\$48,750.00) will be paid
18 to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalty
19 Amount (\$16,250.00) will be distributed to the PAGA Members, which is within the range of PAGA
20 penalties approved by courts and should be approved.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

1 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
2 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
3 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
4 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
5 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
6 penalties were reduced by 90%.

7 For the aforementioned reasons, the PAGA allocation of the Total Settlement Amount is fair, just,
8 and reasonable.

9 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

10 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
11 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
12 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
13 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
14 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Walmart Associates, Inc.*
17 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
18 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
19 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
20 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
21 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
22 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
23 reason, if any, that employees might not take their breaks were predominantly individualized questions
24 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
25 (affirming denial of certification because employees’ declarations attesting to having taken meal and
26 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
27 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
28 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);

1 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
2 meal and rest period claims based on the predominance of individual issues). Collectively, the
3 examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of
4 obtaining certification through a contested motion is a significant risk factor favoring settlement. LFJ
5 Dec., ¶ 30.

6 “The Settlement eliminates these and other risks of continued litigation, including the very real
7 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
8 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
9 inherently perilous regardless of the strengths of merits of the claims:

10 [N]othing is assured when litigating against commercial giants with vast litigative
11 resources, particular in such complex litigation as this, which would strain the
12 cognitive capacities of any jury. Defense judgments were hardly beyond the realm
13 of possibility. Accordingly, this factor weighs in favor of preliminary approval.

14 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18,
15 1990).)

16 Finally, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. LFJ Dec., ¶ 31. “Avoiding such a
20 trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather
21 than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal.
22 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and
23 approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

24 In this matter, Class Counsel negotiated a Total Settlement Amount of \$750,000.00 that is
25 between 24.94% – 55.99% Defendant’s liability exposure for class damages. Given the amount of the
26 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
27 continued litigation, the settlement is fair and reasonable.

28 ///

1 **B. The Proposed Notice Informs the Class about the Case and Settlement**

2 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
3 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
4 information to decide whether they should accept the benefits offered, opt out and pursue their own
5 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
6 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
7 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
8 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
9 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
10 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

11 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
12 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
13 mail the proposed Notice Packet to all Class Members. The Notice Packet will include information
14 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
15 definition, the procedure and time period within which to requests for exclusions or objections to the
16 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
17 and the terms and scope of the Released Class Claims. Settlement at § 9(f), 22. This method was
18 negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class
19 Members while ensuring cost effective administration of the Settlement. SOZ Dec., ¶ 15.

20 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
21 Packet satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of*
22 *Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members
23 of the terms of the proposed compromise and of the options open to dissenting class members.”).) SOZ
24 Dec., ¶ 16.

25
26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
 appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
 Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 **C. The Court Should Preliminarily Approve the Enhancement payment**

2 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
3 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
4 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
5 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
6 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
7 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
8 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
9 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
10 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
11 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
12 (2009) 175 Cal.App.4th 785.)

13 Approximately 256 Class Members will share in the Net Settlement Amount due entirely to the
14 effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for
15 an Enhancement payment of \$10,000.00 for Plaintiff. The enhancement payment is fair and reasonable
16 compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation
17 and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for
18 prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide
19 adequate relief for the Settlement Class. LFJ Dec., ¶ 32.

20 Class Counsel, on behalf of Plaintiff, will file a formal motion for the negotiated Enhancement
21 payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
22 above showing is sufficient for preliminary approval of the negotiated Enhancement Payment. SOZ
23 Dec., ¶ 17.

24 **D. The Court Should Preliminarily Approve the Payment of Attorneys’ Fees and Costs**

25 The purpose of a payment of Attorneys’ Fees and Costs in class action litigation is to reward
26 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
27 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
28 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix*,

1 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
2 percentage method or the lodestar method is used, fee awards in class actions average around one-third
3 of the recovery.”).

4 Class Counsel took this matter on a contingency fee basis and invested significant time and
5 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
6 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
7 The Settlement provides for a payment of Attorneys’ Fees and Costs in the amount of thirty-five percent
8 (35%) of the Total Settlement Amount (\$262,500.00) and reimbursable litigation costs in an amount
9 not to exceed \$35,000.00. Settlement § 13; MOU at ¶ 13. Considering the positive outcome for the
10 Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Costs are
11 fair and reasonable. Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Costs
12 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
13 showing is sufficient for preliminary approval of the negotiated attorneys’ fees. LFJ Dec., ¶ 33.

14 **E. Provisional Certification for Settlement Purposes Is Appropriate**

15 For Settlement purposes only, Plaintiff contends that provisional certification of the Class is
16 appropriate. SOZ Dec., ¶ 18.

17 1. The Standard for Class Certification

18 Class actions are statutorily authorized “when the question is one of common or general interest,
19 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
20 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
21 certification is appropriate when there is an “ascertainable class and a well-defined community of
22 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
23 is appropriate even if class members at some point may be required to make an individual showing as
24 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
25 *Sav-On*, 34 Cal.4th at 333.)

26 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community
27 of Interest Among the Class Members.

28 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is

1 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
2 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where
3 they may be readily identified without unreasonable expense or time by reference to official records.
4 (*Id.*)

5 The community of interest requirement embodies three factors: (1) predominant common
6 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
7 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

8 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
9 question” the element of predominance presents is whether “the issues which may be jointly tried, when
10 compared with those requiring separate adjudication, are so numerous or substantial that the
11 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
12 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

13 Because all Class Members are Defendant’s current and former employees, the class is readily
14 ascertainable from Defendant’s regular business records, i.e., payroll records. The California statutes
15 relating to each of Plaintiff’s claims apply with equal force and effect to the entire Settlement Class.
16 Factually, Defendant’s policies and practices apply class-wide, and Defendant’s liability can be
17 determined by facts common to all members of the class. The wage and hour issues are both numerous
18 and substantial, and a class action is the most advantageous method of dealing with the claims of the
19 Settlement Class. SOZ Dec., ¶ 19.

20 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
21 from the same factual basis and are based on the same legal theories applicable to the other Class
22 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
23 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
24 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
25 to advocate for the interests of the Class Members by initiating this litigation and evaluating the
26 proposed settlement to assure that it is fair. LFJ Dec., ¶ 34.

27 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
28 each individual claim, the Class Members likely have little incentive to litigate their claims on an

1 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
2 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
3 adjudication. SOZ Dec., ¶ 20.

4 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
5 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
6 gained state court settlement approval of the same class-wide causes of action that are at issue in this
7 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
8 represent the interests of this Class. LFJ Dec., ¶¶ 2-7; SOZ Dec at ¶ 7; Declaration of Jean-Claude
9 Lapuyade, Esq. at ¶¶ 3-8.

10 IV. CONCLUSION

11 The Parties have negotiated a fair and reasonable settlement of claims. Accordingly, Plaintiff
12 requests that the Court preliminarily approve the Settlement, the terms of which are outlined in the
13 Parties' MOU, and more fully detailed in the partially-executed Settlement Agreement.

14 Dated: July 31, 2026

ZAKAY LAW GROUP, APLC

15 By: /s/ Nicole Noursamadi
16 Nicole Noursamadi, Esq.
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